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EXHIBIT A

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JUDICIAL PANEL ON
MULTIDISTRICT
LITIGATION

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re:

Katz Interactive Call Processing Litigation

)
) MDL Docket No. 1816
)
)
)

**WILMINGTON TRUST COMPANY AND WILMINGTON BROKERAGE
SERVICES COMPANY'S RESPONSE IN OPPOSITION TO MOTION FOR
TRANSFER AND CONSOLIDATION OF KATZ TECHNOLOGY
LICENSING PATENT LITIGATION PURSUANT TO 28 U.S.C. §1407**

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I. INTRODUCTION

Wilmington Trust Company and Wilmington Brokerage Services Company (“Wilmington Trust”) are defendants in a case entitled *Ronald A. Katz Technology Licensing, L.P. v. American International Group, Inc., et al.*, currently pending in the United States District Court for the District of Delaware, No. 1:06-CV-547, before Judge Gregory M. Sleet. This case is one of five related cases currently pending before Judge Sleet in the District of Delaware (“Delaware Litigation”).¹

The Delaware Litigation, which was initiated by Ronald A. Katz Technology Licensing L.P. (“Katz”) on or about September 1, 2006, involves approximately eighty-two (82) defendants. The five separate actions which comprise the Delaware Litigation appear to be grouped by industry type – Civil Action No. 06-546 appears to involve internet and cable television service providers, Civil Action No. 06-543 involves energy providers, Civil Action No. 06-544 involves primarily banks, Civil Action No. 06-545 primarily involves services related to refilling prescriptions, and Civil Action No. 06-547 primarily involves insurance service providers.

On October 6, 2007, Target Corporation, Target Bank and Target National Bank (“Target”) filed a Motion for Transfer and Consolidation of twenty-five patent actions, including

¹ The four other related actions pending before Judge Sleet in the District of Delaware are: *Ronald A. Katz Technology Licensing, LP. v. Reliant Energy et al.*, No. 1:06-CV-543, *Ronald A. Katz Technology Licensing, LP. v. TD Banknorth, Inc., et al.*, No. 1:06-CV-544, *Ronald A. Katz Technology Licensing, LP. v. Ahold USA, Inc., et al.*, No. 1:06-CV-545, and *Ronald A. Katz Technology Licensing, LP. v. Time Warner, et al.*, No. 1:06-CV-546.

the Delaware Litigation.² Wilmington Trust hereby opposes transfer of the Delaware Litigation because such transfer would not serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation. *See* 28 U.S.C. §1407(a). Wilmington Trust additionally joins in the responses in opposition filed by CIGNA Corporation, CIGNA Health Corporation, CIGNA HealthCare of Delaware, Inc., Tel-Drug, Inc., Tel-Drug of Pennsylvania, L.L.C., American International Group, Inc., AIG Retirement Services, Inc., 21st Century Insurance Group, 21st Century Insurance Company, 21st Century Casualty Company, AIG Marketing, Inc., AIG SunAmerica Asset Management Corp., AIG Annuity Insurance Company, AIG Federal Savings Bank, The United States Life Insurance Company in the City of New York, AIG Life Insurance Company, American General Assurance Company, American General Indemnity Company, American General Life and Accident Insurance Company, American General Life Insurance Company, The Variable Annuity Life Insurance Company, VALIC Financial Advisors, Inc., and VALIC Retirement Services Company.

II. ARGUMENT

In patent litigation, transfer and consolidation is inappropriate where there are few common questions of fact, transfer would not serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation. *In re Molinaro/Catanzaro*, 464 F. Supp. 966, 968 (J.P.M.L. 1979); *In re Allen Compound Bow Patent Litigation*, 446 F.Supp. 248, 251 (J.P.M.L.1978). This is particularly true, where, as here, the accompanying discovery would not be sufficiently time consuming to justify transfer and suitable alternatives to minimize the possibility of duplicative discovery exist. *In re Sicilia Di R. Biebow & Co. Contract Litigation*,

² A schedule of the twenty-five actions is attached as Exhibit A to the Motion for Transfer and Consolidation.

490 F.Supp. 513, 515-16 (J.P.M.L. 1980); *In re Wyeth Patent Infringement Litigation*, 445 F. Supp. 992, 993 (J.P.M.L. 1978).

A. The Actions Do Not Present Common Issues.

Target asserts that the pending actions involve multiple members of an alleged family of patents assigned to Katz. In fact, these actions involve a total of twenty-seven different Katz patents. While a number of the same patents may be asserted in each of the pending actions, Target's approach overlooks the significance of the particular individual patent claims that may be asserted in each suit (or against each party) in establishing the particular issues in dispute in each action.

Katz has grouped the various Delaware Litigation defendants by general industry type. Because all of the Delaware Litigation involves aspects of so-called "interactive call processing," it is reasonable to assume Katz grouped the Delaware Litigation defendants by industry type for the simple reason that each industry has similarity of issues. Thus, it is logical to assume that there are specific practices within each industry which relate to the operation of the call centers for each industry.

In contrast, the other pending actions were not grouped by industry type. It therefore appears that specific claim groupings are relevant for the Delaware Litigation but may not be relevant for the other pending actions. Thus, given the specific industry groupings utilized by Katz in "structuring" the Delaware Litigation, and the related anticipated assertion of specific claims unique to those operations, it cannot be presumed that common issues of fact will predominate between the Delaware Litigation and the other pending actions. To the contrary, it is expected that practices unique to specific industries (and individual defendants) will present unique and disparate factual circumstances requiring separate treatment.

B. Transfer Would Not Serve the Convenience of the Parties in the Delaware Litigation.

Wilmington Trust, as are the majority of the eighty-two defendants in the Delaware Litigation, is a Delaware company headquartered in Delaware. Furthermore, many of the Delaware Litigation defendants have principal places of business in Delaware. As such, the majority of the documents and witnesses relevant to the Delaware Litigation are located in the District of Delaware. For the Delaware Litigation defendants, consolidation in a distant forum will not serve the convenience of the parties.

Furthermore, in light of the relatively large number of parties and industries represented in these various actions (and specific issues unique to each), consolidation will actually render these cases virtually unmanageable relative to the current status. As the Delaware Litigation is pending before the same Judge, the adoption of mechanisms specific to the claims and issues is relatively feasible. Combining the various parties in a single consolidated action, however, will inevitably lead to multiplication of the relevant claims and issues beyond which any individual party presently has to be concerned.

Wilmington Trust also understands that there are potential conflict issues with the Heller Erhman, LLP firm, lead counsel for Katz in the Delaware Litigation and the Cooley Godward Kronish, LLP firm, lead counsel for Katz in the Texas Litigation, which would make consolidation extremely problematic from a conflict of interest stand point.

C. Transfer and Consolidation Would Not Promote the Just and Efficient Conduct of the Actions.

Katz is suing one-hundred and seventy defendants for claims involving twenty-seven separate patents. However, at most, there are only eleven patents at issue in the Delaware Litigation. Requiring Wilmington Trust to participate in extensive pretrial discovery relating to

twenty-seven separate patents would clearly not promote the just and efficient conduct of the litigation.

Moreover, sixteen of the Katz patents are being construed by Judge David Folsom in the Eastern District of Texas. The Taxarkana Division cases pending before Judge Folsom have been pending for approximately eighteen months and are well advanced. In fact, a claim construction hearing (Markman) was held before Judge Folsom on September 20, 2006. Under collateral estoppel principles, a determination of patent invalidity in the Texarkana Division action would likely prove dispositive in the Delaware Litigation. *See, e.g., In re Allen Compound Bow Patent Litigation*, 446 F.Supp. at 250 (“a determination of patent invalidity in that action would likely prove dispositive of that issue in the remaining actions in this litigation”) (citations omitted).

D. Suitable Alternatives to Transfer Are Available to Minimize the Possibility of Duplicative Discovery.

In its motion to transfer and consolidate, Target creates the impression that formal consolidation in a multidistrict proceeding under Section 1407(a) is the only viable mechanism for achieving coordination of the various proceedings in an efficient manner. Target’s approach sidesteps the significant fact that the present actions are pending in only two judicial districts -- Delaware and Texas. The Judicial Panel has long recognized that alternatives to consolidation are appropriate to the coordination of civil actions, particularly, where only a limited number of judicial districts are involved. *See In re Zimmer, Inc., Centralign Hip Prosthesis Prod. Liability Lit.* (No. II), 366 F.Supp.2d 1384, 1385 (J.P.M.L. 2005) citing *In re Zimmer, Inc., Centralign Hip Prosthesis Prod. Liability Lit.*, 237 F.Supp.2d 1376 (J.P.M.L. 2002) (denying consolidation of a two-district docket); *see also In re Qwest Communications Int’l, Inc. Securities & “ERISA” Lit.*, 3965 F.Supp.2d 1360 (J.P.M.L. 2005) (denying consolidation of twenty-three actions

pending in two districts); see also *In re Georgeson Shareholder Comm. Inc., Share Exchange Lit.*, 277 F.Supp.2d 1372 (J.P.M.L. 2003) (denying consolidation of a two-district docket).

This Panel should deny consolidation of the Delaware Litigation because suitable alternatives are available to the parties. See *In re Sicilia Di R. Biebow & Co. Contract Litigation*, 490 F.Supp at 515-16; *In re Molinaro/Catanzaro*, 464 F.Supp. at 969; *In re Wyeth Patent Infringement Litigation*, 445 F.Supp. at 993. Clearly, Judge Sleet will coordinate the Delaware Litigation. Moreover, to the extent necessary, Judge Sleet can coordinate with Judge Folsom. Any party could ask the judge assigned to a particular action to issue an order to show cause why the discovery already completed in any related action should not be made applicable to the former action. *In re Molinaro/Catanzaro*, 464 F.Supp. at 969. Or, the parties simply could stipulate that the discovery could be used in a particular action. *Id.*

Additionally, consultation and cooperation among the two courts, coupled with the cooperation of the parties, would minimize the possibility of duplicative discovery. *In re Sicilia Di R. Biebow & Co. Contract Litigation*, 490 F.Supp at 515-16. For example, notices for a particular deposition could be filed in all actions, thereby making the depositions applicable in each action. *Id.* The parties could seek to agree upon a stipulation that any relevant discovery could be used in all the actions. *In re Wyeth Patent Infringement Litigation*, 445 F.Supp. at 993. In addition, any party could seek orders from the two involved district courts directing the parties to coordinate their pretrial efforts. *Id.*

IV. CONCLUSION

For the foregoing reasons, Wilmington Trust requests that this Panel decline to transfer and consolidate actions in the Eastern District of Texas and the District of Delaware.

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Dated: November 6, 2006

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re:	:	
	:	MDL Docket No. MDL-1816
Katz Technology Licensing Patent Litigation	:	
	:	

REVISED CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing Wilmington Trust Company
And Wilmington Brokerage Services Company's Response In Opposition To Motion For
Transfer And Consolidation Of Katz Technology Licensing Patent Litigation Pursuant To 28
U.S.C. §1407 was served on all counsel listed on the attached Service List via First Class Mail,
postage prepaid, on this 7th Day of November, 2006.



Camille M. Miller

Nov-07-2006 10:44am From:COZEN O'CONNOR

202-812-4830

T-030 P.004/008 F-185

Judicial Panel on Multidistrict Litigation - Panel Attorney Service List

Page 1

Docket: 1816 - In re Katz Interactive Call Processing Patent Litigation

Status: Pending on / /

Transferee District: Judge:

Printed on 11/07/2006

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Note: Please refer to the report title page for complete report scope and key.

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Note: Please refer to the report title page for complete report name and key

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(Panel Attorney Service List for MDL 1,816 Continued)

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*Note: Florida refers to the report title page for complete report names and key

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Nov-07-2006 10:45am From: COZEN O'CONNOR

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(Panel Attorney Services List for MDL 1,816 Continued)

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T-030 P.008/009 F-195

(Panel Attorney Service List for MDL 1,816 Continued)

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CERTIFICATE OF SERVICE

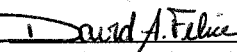
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